MEMORANDUM BRIEF IN SUPPORT OF PETITION.

A treaty between the United States and Germany, granting nationals of each of the contracting parties full power to dispose of personalty within the territory of the other, will, by virtue of Article 6, Section 2, of the Constitution, override and supersede local statutes limiting the period for the probate of wills.

The Missouri Supreme Court, after recognizing the rulings of this Court, that the treaty-making power of the United States will supplant or qualify State laws regulating the administration of estates, and that treaties must be construed liberally, concluded, nevertheless, that the local statute limiting the time for the probate of a will does not conflict with the treaty between the United States and Germany, and is not superseded by that treaty. That court thus said, in effect, that the treaty provision, that the nationals of either contracting party may have full power to dispose of their personal property in the territory of the other, must, in practice, yield to the Missouri statute.

This conclusion of the court apparently is contrary to the rule that may logically be deduced from the opinions of the Court in *Missouri* v. *Holland,* 252 U. S. 146; *Hopkirk* v. *Bell,* 3 Cranch 454; *Hauenstein* v. *Lynham,* 100 U. S. 483; *United States* v. *Belmont,* 301 U. S. 324; *Asakura* v. *Seattle,* 265 U. S. 332; *Santovincenzo* v. *Egan,* 284 U. S. 30, and *In re Ghio's Estate,* 223 U. S. 317.

This Court said generally, in those cases, that a treaty of the United States will override the statutes of a State, and specifically, that a treaty will supersede statutes of limitation and take precedence in matters of administration of a decedent's estate. In *Missouri* v. *Holland, supra* (l. c. 434), this Court's opinion stated:

> "No doubt the great body of private relations usually falls within the control of the state, but a treaty may override its power. We do not have to invoke the later

developments of constitutional law for this proposition; it was recognized as early as Hopkirk *v.* Bell, 3 Cranch 454, with regard to statutes of limitation, and, even earlier, as to confiscation, in Ware *v.* Hylton, 3 Dall. 199."

In *Ware* v. *Hylton* (l. c. 236), cited in the foregoing opinion, the court commented on Article 6, Section 2, of the Constitution, saying:

> "There can be no limitation on the power of the people of the United States. By their authority the state constitutions were made, and by their authority the Constitution of the United States was established; and they had the power to change or abolish the state constitutions, or to make them yield to the general government, and to treaties made by their authority. A treaty cannot be the *supreme law* of the land, that is of all the United States, if any act of a state legislature can stand in its way * * * It is the declared will of the people of the United States, that every treaty made by the authority of the United States, shall be superior to the Constitution and laws of any individual state."

This opinion was quoted in *Hauenstein* v. *Lynham, supra* (l. c. 490), with the further comment:

> "It must always be borne in mind that the Constitution, laws and treaties of the United States are as much a part of the law of every state as its own local laws and Constitution. This is a fundamental principle in our system of complex policy."

The decision of the Missouri court does not accord the treaty supreme authority in this case, and the opinion explains that the treaty was not meant to supersede the restrictive statutes of the different States in administration proceedings, but provided for submission to the local laws of each country. This decision, therefore, refuses recognition of the "full power" to dispose of personal property guaranteed the nationals of the contracting parties, and the right guaranteed transferees to take possession. It apparently

is in conflict with the decision of this court in *Tampa Water Works* v. *Tampa*, 199 U. S. 241, that "full power" means "a power which cannot be cut down." The signatories to the treaty apparently contemplated that the transferees of foreign nationals should have no local obstructions placed in their way, when attempting to take possession of the property conveyed to them in accordance with the law of the grantor's domicile. This Court said in *U. S.* v. *Belmont*, 301 U. S. 324, 327, that "no state policy can prevail against the international compact here involved", and stated further (page 331) that in respect of all international negotiations and compacts, and in respect of our foreign relations generally.

> "State lines disappear * * * Within the field of its powers whatever the United States rightfully undertakes, it necessarily has warrant to consummate. And when judicial authority is invoked in aid of such consummation, state constitutions, state laws and state policies are irrelevant to the inquiry and decision. It is inconceivable that any of them can be interposed as an obstacle to the effective operation of a federal constitutional power."

In *Asakura* v. *Seattle* (l. c. 341), *supra*, this Court said that a treaty

> "stands on the same footing of supremacy as do the provisions of the Constitution and laws of the United States. It operates of itself without the aid of any legislation, state or national; and it will be applied and given authoritative effect by the courts."

It is difficult to see how the Missouri court gave full respect to these decisions of this Court.

The opinion of the Missouri court also fails to recognize that the treaty was apparently framed in recognition of the rule enunciated by this Court in the case of *Dixon's Executors* v. *Ramsay's Executors*, 3 Cranch 319, and the case of *Hilton* v. *Guyot*, 159 U. S. 113.

In *Dixon's Executors* v. *Ramsay's Executors, supra* (l. c. 383, 384), this Court stated that "all rights to personal property are admitted to be regulated by the laws of the country in which the testator lived", while, in *Hilton* v. *Guyot, supra,* it established the rule that comity must be extended by the courts of this country to the judgments of foreign courts, particularly in matters *in rem.*

The will of the decedent Orth thus took its life not from the ancillary probate in Missouri, as the opinion of the Missouri court may imply, but from the principal probate, in Germany. This German judgment of probate, by virtue of the treaty and the decisions of this Court cited, is entitled to full respect in courts of this country as a judgment *in rem,* Germany according the same respect to our judgments. *Vogel* v. *New York Life Insurance Company,* 55 F. (2d) 205. Ancillary probate in Missouri seems necessary only as an incident to giving effect to the treaty. Such recognition the Missouri Supreme Court has refused. By requiring that the rights guaranteed the legatees by the treaty, must be subjected to local restrictions, the court has denied rights claimed under the treaty, by an interpretation that seems unwarranted by the cited decisions of this Court.

Thus, while the treaty in question, has never actually been interpreted by this Court, and the question whether a treaty of this kind must yield to a local statute of limitation has never been specifically considered by this Court, the Missouri Supreme Court has, nevertheless, interpreted the treaty and decided the Federal question presented, in a manner apparently not in accord with the spirit of, or the logical conslusions to be drawn from the decisions of this Court.

Respectfully submitted,

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